

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEON STRAYHORN,

Plaintiff,

No. 11-15216

v.

District Judge Patrick J. Duggan
Magistrate Judge R. Steven Whalen

PATRICIA CARUSO, ET AL.,

Defendants.

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ORDER REGARDING DISCOVERY MOTIONS

This is a prisoner's civil right case, involving multiple defendants, filed by a *pro se* plaintiff. Discovery has been chaotic, and the following motions are pending:

-Dkt. #83: Motion to quash subpoenas, by non-party MDOC Director Daniel Heyns.

-Dkt. #91: Defendant Karen Malicoat's joinder in motion #83.

-Dkt. #87: Plaintiff's motion to dismiss (withdraw) his request for entry of default.

-Dkt. #89: Plaintiff's motion for issuance of new blank subpoenas, permitting service by alternative means, and for extension of discovery.

-Dkt. #93: Motion to withdraw motion for issuance of new blank subpoenas (#89) and replace it with new motion to serve subpoenas by alternate means, to serve additional interrogatories, and to extend discovery.

-Dkt. #94: Plaintiff's motion to withdraw demand for jury trial.

-Dkt. #101: Plaintiff's motion to expedite resolution of pending motions.

Having reviewed all pleadings, including motions, responses, replies and joinders in motions, as well as all exhibits attached to motions, and being fully advised, the Court

orders as follows:

Motion #83, to quash non-party subpoenas, and Motion #91, Defendant Karen Malicoat's joinder, are GRANTED. The subpoenas were improperly served under Fed.R.Civ.P. 45. Plaintiff so concedes in his Motion #89.

Plaintiff's motion to dismiss his request for entry of default [Dkt. #87] is GRANTED.

Plaintiff's Motion #93 is GRANTED IN PART AND DENIED IN PART, as follows:

(1) Plaintiff's request to withdraw Motion #89 (to issue new blank subpoenas) is GRANTED, and Motion #89 is deemed WITHDRAWN.

(2) Plaintiff's request to issue new blank subpoenas is DENIED. Apart from any procedural non-compliance with Rule 45, the information that Plaintiff seeks from MDOC Director Heyns has been objected to by Defendant Karen Malicoat, *see* Dkt. #91. Plaintiff seeks internal affairs investigations regarding Ms. Malicoat. However, she has asserted, and is protected by the deliberative process privilege. Under the framework set forth in *Schell v. U.S. Department of Health & Human Services*, 843 F.2d 933, 940 (6th Cir. 2008), these documents would be both pre-decisional and deliberative, and thus not subject to discovery.

(3) Recognizing that Plaintiff is a *pro se, in forma pauperis* prison inmate, and thus limited in his ability to exploit the full panoply of discovery devices, including depositions, his request to propound additional interrogatories and requests for production of documents is GRANTED IN PART. However, this additional discovery will be limited to the interrogatories and requests for production propounded the Prison Health Service ("PHS") Defendants, which those Defendants have submitted with their response

to Plaintiff's motion [Dkt. #97]. The Plaintiff's requests are for the most part relevant and discoverable, with the following exceptions: Request No. 3 (overly broad and burdensome); and Request No. 11 (overly broad and burdensome, except for information regarding previous lawsuits against Dr. Khan, which is discoverable).

(4) Plaintiff's request for an extension of time to complete discovery is GRANTED IN PART. The closing date for discovery is extended 45 days, to SEPTEMBER 5, 2013. The dispositive motion cut-off date is likewise extended 45 days, to OCTOBER 7, 2013.

Plaintiff's Motion #94, to withdraw demand for jury trial, is GRANTED.

Plaintiff's Motion #101, to expedite resolution, is DENIED AS MOOT.

IT IS SO ORDERED.

Dated: July 24, 2013

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on July 24, 2013, electronically and/or by U.S. mail.

s/Michael Williams
Relief Case Manager for the
Honorable R. Steven Whalen